

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0164P**  
**Sales & Use Tax**  
**For the Years 1997, 1998, 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Interest**

**Authority:** Ind. Code § 6-8.1-10-1; 11 U.S.C. § 502(b)(2).

Taxpayer protests the imposition of interest after the date taxpayer filed for bankruptcy.

**II. Tax Administration - Penalty**

**Authority:** Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a business engaged in automobile glass repair and replacement. From 1997 to 1999, taxpayer claimed sales tax exemption with respect to one customer, and did not remit sales or use tax with respect to several purchases of both capital and non-capital equipment and tangible personal property that taxpayer rented. As a result of Department audit, taxpayer was assessed additional sales and use tax as well as interest and a ten percent (10%) penalty for negligence. Taxpayer has agreed with the Department's sales and use tax assessment; however, taxpayer protests the Department's imposition of interest after the date on which it filed for bankruptcy. Taxpayer also protests the imposition of the statutory penalty for negligence.

**I. Tax Administration – Interest**

**DISCUSSION**

Taxpayer protests the imposition of interest from the date taxpayer filed for bankruptcy to present. Taxpayer argues that the ruling on the bankruptcy petition precludes the Department from assessing interest against the taxpayer, and therefore this should be waived.

Under Ind. Code § 6-8.1-10-1(e), interest cannot be waived by the Department. However, due to 11 U.S.C. §502(b)(2), the Bankruptcy Court's ruling prohibiting post-petition interest must be permitted to stand.

### **FINDING**

Taxpayer's protest is sustained.

## **II. Tax Administration-Penalty**

### **DISCUSSION**

Taxpayer protests the imposition of the ten percent (10%) negligence penalty for all taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;

(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer argues that penalty should be waived in this case for two reasons. First, it argues that the taxpayer took immediate steps to correct the issue that gave rise to the tax in question. Second, taxpayer argues that it has had an excellent compliance history with the Department. While its changes in procedures are certainly commendable, taxpayer's failure to utilize the other appropriate procedures in the first place did not meet the duty of reasonable care expected of a taxpayer. Further, even accepting taxpayer's statement of an excellent compliance history, in this instance taxpayer's operations did not meet the duty of ordinary business care expected of taxpayers.

### **FINDING**

Taxpayer's protest is denied.